

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review Minutes

December 6, 2005 Minutes

Present: Raymond Arsenault, Kristin Rao, Gabriella Halmi, Arthur Russo, Jr., Jim King, Attorney Mark Krieger

Excused: Nicholas Rampone

Minutes

Chairman Arsenault informed Recording Secretary that there were two typographical errors on page 5. Recording Secretary will make corrections. Motion made by Member Russo to accept the November 1, 2005 Minutes. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Correspondence

Chairman Arsenault read into the record letter from Richard E. Kirby, Esquire, attorney for Tiffany Plaza, asking that they be placed on the Zoning Board's next agenda for a second extension of a variance granted on May 4, 2004. Motion made by Member Halmi to place the application on the January 3, 2006 agenda. Motion seconded by Member Rao. Motion carried with a 5-0 vote.

Applications

Michael Ricci, 1805 Old Louisquisset Pike, Lincoln, RI – Dimensional

Variance for the creation of a second lot.

AP 25, Lot 178 Zoned: RA 40

Applicant addressed the Board asking that his application be continued to the February agenda. Motion made by Member Halmi to continue the application to the February 7, 2006 agenda. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Miguel & Elizabeth Simao, 11 Riverside Drive, Lincoln, RI – Dimensional Variance for front yard setback for the construction of a second story and farmer's porch.

AP 13, Lot 92 Zoned: RL9

Chairman Arsenault abstained from voting and the alternates sat in review with full privileges. This application was continued to the December agenda at the Board's request so the Technical Review Committee could review the revised plans and present their recommendation. Applicant has removed a turret and side porch from the plans to lessen the requested relief.

Chairman Arsenault read into the record Planning Board/Technical Review Committee recommendation:

Members of the Technical Review Committee visited the site and reviewed the revised submitted plans and application. The Planning Board and the Technical Review Committee feel that the majority of the requested dimensional variances are needed for the existing foot

print of the existing house. Based on the revised submitted plans, the Planning Board recommends Approval of these dimensional variances. The Planning Board feels that this plan represents the least relief required, will not alter the general character of the surrounding area nor impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.

Motion made by Member Rao to grant 4' 4" northern corner, 6' 8" south side and 9' 6" dimensional variance stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Lincoln Point, LLC, 2547 West Main Road, Portsmouth, RI/Cloverleaf III, LLC, 640 George Washington Highway, Lincoln, RI – Special Use

Permit for the construction of a Senior Residential Community on property located on George Washington Highway, (Route 116), Lincoln, RI.

AP 31, Lots 38 & 40 Zoned: BL5

Mark Krieger, Esquire, Town Solicitor, informed the Board that he has a business association with applicant and recused himself from the application to avoid impropriety. Paul Brule, Esquire sat as Town Solicitor.

Represented by: Michael F. Horan, Esquire

At the Board's request, this application was continued to the December agenda so applicant could return with a traffic study and alternate traffic plan, additional parking plan, alternate egress plan, and plan for pedestrian traffic across to the Lincoln Mall site.

Chairman Arsenault informed Attorney Horan that there may be a notice problem. Attorney Horan replied that he had just been informed of that by the Assistant Solicitor. Notice that was sent out in October for the November meeting and was returned. Because the hearings have already started, he is prepared to go forward and asked that any decision made afford them time to get a waiver from the party who did not receive the notice. Solicitor Brule replied he did not see a legal problem if applicant was willing to take that risk. Chairman Arsenault replied the Board should proceed with hearing the application. Attorney Horan distributed a new site plan to the

Board members.

Witness:

Sean Martin, CE

Mr. Martin had been sworn in as an expert witness at the November 2005 meeting. He prepared the new site plan as requested by the Zoning Board's at the November meeting. Applicant has provided for more parking spaces around the buildings (20 designated for future parking) and up to 290 spaces; handicap number of parking spaces has not changed; a curb cut for site access will be located on Route 116 which will strictly be used for entering the site; exit from the site will be onto Old Louisquisset Pike; a pedestrian path will be installed subject to obtaining an easement from the Lincoln Mall; additional lighting poles will be installed; and, there will be no egress onto Route 116. Signage will be placed at the entrance on Route 116.

Derek Hudd, Transportation Engineer

He is a Rhode Island Licensed Professional Engineer. A traffic impact study was conducted at the site. Access to the development will be from Route 116 and exit onto Old Louisquisset Pike. Route 116 is a 5-lane highway – two in each direction and a left hand turn. Conferred with Department of Transportation regarding future developments in the area. Traffic counts were done and a trip generation study showed an average of 29 trips during morning peak hours and 35 during the late afternoon peak hours.

Jeffrey Robinson, Managing Partner - Continuum Care Management

There will be sufficient on-site parking for 30 full time employees who provide services 7 days per week/24 hours per day. Manages other similar facilities.

Chairman Arsenault asked if the application had been amended to omit the medical office building. Attorney Horan replied that a vote was taken at the end of the November meeting to remove the medical office building from the application. Chairman Arsenault replied that he saw in the Minutes that a request that the application be amended but no vote taken. Out of an abundance of caution, Chairman Arsenault asked that a motion be made to that effect.

Member Halmi thanked applicant for addressing the Board's concerns from the November meeting.

Motion made by Member Halmi to amend the Special Use Permit application to delete the medical office building. Motion seconded by Member Rao and carried with a 5-0 vote.

Motion made by Member Halmi to grant the Special Use Permit for 155 units for aged 55+ residences stating:

- That the special use is specifically authorized under the Town Ordinance;**
- That the special use meets all the criteria set forth in the Town Ordinance authorizing such special use;**

- That the granting of the special use permit will not alter the general character of the surrounding area; and
- That the granting of the special use permit will not impair the intent or purpose of the Town Ordinance nor the Lincoln Comprehensive Plan.

Motion seconded by Member Gobeille and carried with a 5-0 vote.

Lincoln Point, LLC, 2547 West Main Road, Portsmouth, RI/Cloverleaf III, LLC, 640 George Washington Highway, Lincoln, RI – Dimensional Variance for parking spaces and building height relief for a proposed Senior Residential Community at property located on George Washington Highway (Route 116), Lincoln, RI.

AP 31, Lots 38 & 40 Zoned: BL 5

Motion made by Member Russo to grant dimensional relief for 290 parking spaces (20 less than the required 310 spaces) and 15 foot building height stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- Granting of this variance will not alter the general character of the

surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.

- Relief requested is the least relief necessary.
- Hardship amounts to more than a mere inconvenience.

Motion seconded by Member Rao. Motion carried with a 5-0 vote.

Lincoln Park, 1600 Louisquisset Pike, Lincoln, RI – Dimensional Variance to remove existing 20' lighting poles and install new 35' poles.

AP 42, Lot 24 Zoned: CR 2

Russell Hervieux, Zoning Official informed Chairman Arsenault that there was an error in the posting of the application. The posting stated the application for Dimensional Variance was to remove existing 20' poles and install 35' poles. The existing poles are 50' and they are reducing them down to 35'. Chairman Arsenault asked Solicitor Krieger if application could be modified or did it have to be renoticed. Solicitor Krieger replied it did not need to be renoticed because the basic facts of the application are listed that they are seeking dimensional variance for light poles and notice was adequate.

Chairman Arsenault informed applicant what standards needed to be met for the granting of a Dimensional Variance.

Represented by: Peter Ruggiero, Esquire

Solicitor Krieger addressed Attorney Ruggiero stating the application listed the owner as Lincoln Park. Attorney Ruggiero replied that the correct legal name of the applicant is UTGR and application was signed by Craig Soulis, COO. There are 65 light poles on the property that illuminate the site ranging from 20'+ to 75' in height using a combination of flood lights and parking lot lighting. They want to remove those non-conformities and install twenty-nine 20'lights that conform to our code and eighty-five 35' fixtures in the parking areas. This will reduce off-site glare on Twin River Road and Louisquisset Pike resulting from the existing lights. Proposed lighting will result in uniform equal lighting in parking lot without any hot spots from over intensive lighting.

Witness:

Sean Martin, CE - Fuss & O'Neill

Has appeared before this Board in the past. He is the project engineer and prepared the plans before this Board which shows the existing light poles and types of lighting in place. Also attached is a summary listing the number of each type of fixture. At the existing site entrance on Twin River Road, light poles are 33' high. There will be twenty-nine 20' poles at the new entrances and eighty-five 35' poles at the new site roadway and parking lot and islands allowing for multiple head fixtures which will reduce the amount of glare at the site. Lights do not have shields on them that would restrict lights in certain areas of the parking lot. Shortest pole depicted on plans is

23' high. Northern parking lot is not lit. 20' poles will be located at the entrances. 35' poles are intended for the new site roadway and parking lots. Existing site entrance on Twin River Road will move farther to the left. Proposed entrances will be on the north, west and south sides of the property. Each entrance will be considered a main entrance with new proposed lighting poles. Twin River Road entrance is moving about 150-200 feet west. Four 20' poles will be located at the Twin River Road entrance. 35' poles will be distributed throughout the parking lot.

Michael Callahan, Vice President Fuss & O'Neill

Electrical Engineer licensed in Rhode Island, Massachusetts and Connecticut.

Motion made by Member Rao to accept Mr. Callahan as an expert witness. Motion seconded by Member Gobeille and carried with a 5-0 vote. He prepared the lighting plans and selected proposed height and location of poles. The IDS sets forth objectives for site lighting designs. Principal objectives are safety, esthetics, and energy performance. They are trying to establish a uniform lighting level on all horizontal surfaces. Simulations showed that the 35' level is where they got the best lighting. The entrances will have multiple head fixtures. Proposed lighting fixture will significantly reduce glare. Manufacturers of the shields and fixtures spend time in trying to develop fixtures to meet IDS standards. Lights will be shoebox style aimed downwards. There will be some light spillage into the wetlands area. Impact to adjacent property owners will be minimal.

Proposed fixtures are better than the existing lighting creating more uniform lighting of the site. The process of qualifying light in this case is very subjective and acceptable based on computer simulation. The amount of spillage off the site will be minimal or below what spills now.

Joseph Lombardo, AICP

He has testified before this Board in the past and has been accepted as an expert witness. Motion made by Member Rao to accept Mr. Lombardo as an expert witness. Motion seconded by Member Halmi and carried with a 5-0 vote.

He prepared a land use evaluation which he submitted to Board members for their review. This is a CR 2 zoned district and he is familiar with the town's Comprehensive Plan. Proposed lighting will improve the site and quality of enjoyment. All the standards for a Dimensional Variance have been met. The applicant did construct the existing light fixtures over time and they currently exist as a non-conformance as far as height is concerned. The project is for the safety of the patrons using the site. The surrounding area is primarily residential. If the application is not granted, it would be a major inconvenience for the applicant. These improvements are needed for safety of those utilizing the site.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and

reviewed the submitted plans and application. The Planning Board recommends Approval of this application. The Board finds that the dimensional variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance, or the Comprehensive Plan. The Planning Board feels that the proposed lighting fixtures and associated shields will help control the overall direction of lighting within the complex and will eliminate light spillage into residential areas.

Opposed:

Martha Punchak, 19 Twin River Road, Lincoln, RI

Will applicant be placing 20' lights at the Twin River Road entrance? Applicant replied they will be installing four 20' light poles on an island 150-200 feet down the road. Will flood lights remain on the poles? Applicant replied they will be removed.

Oliver Perry II, 15 Twin River Road, Lincoln, RI

The flood lights will be removed? Applicant replied yes and there will be no building mounted flood lights.

James Jackson, 1615 Louisquisset Pike, Lincoln, RI

Is applicant going from 65 poles to 115 poles and is there any way the view of light poles can be blocked? Applicant replied "yes" they will be maxing out at 114 poles. Currently, the north end of the parking lot is almost completely dark and they plan on installing some

lighting poles in that location. There will be no new lighting along the eastern boundary of the property. New light poles will replace the existing ones. The new poles will provide less light pollution than the existing poles.

Catherine Spatz, 388 Angell Road, Lincoln, RI

What is the hardship of complying with the current zoning of 20' poles. Applicant replied that the 20' standard is not practicable in that it may not be safe. She stated that testimony was presented if 20' poles were used it would increase the number of poles – she did not hear testimony that 20' poles would provide any better lighting. She would like to protest that the advertising was incorrect and inaccurate and felt the Board should defer their vote until the community has been updated.

Attorney Ruggiero stated the proposal has been designed to comply with dimensional variance requirements for relief. New owners are involved and want to improve lighting at the site and reduce glare off site.

Member Halmi suggested that perhaps the Board could hear other applications and allow the applicant time to meet with abutters in an adjoining room to show them the proposed plans and answer any questions they may have. This would be the first time some of the abutters would see the lighting plans. Applicant replied they would be willing to meet with the abutters and adjourned to the community

room.

Lanmar Corporation, 362 Central Avenue, Pawtucket, RI – Dimensional Variance for the construction of a two-story, single family dwelling on a 24'x28' foundation located at the corner of Reservoir and Oakwood Avenue.

AP 16, Lot 177 Zoned: RL 9

Chairman Arsenault informed applicant standards that needed to be met for the granting of a Dimensional Variance.

Represented by: Michael F. Horan, Esquire

Applicant is before this Board asking for relief of 8'4" front yard and 8' side yard setback. This is a corner lot.

Witness:

Michael Martin, Vice President

A purchase and sale agreement is pending with owner subject to Zoning Board approval to construct a single family dwelling. . Applicant wants to build a single family, two-story home on a 24'x28' foundation. This is a sub-standard lot of record and needs relief for the proposed home. Lot size is 5,892 square feet. Without relief a house would not fit on lot. (Exhibit 1 – House Plan). House will not have a garage and parking will be to the left of the house. Member Russo asked applicant why he did not consider moving the house further back between him and his neighbor to the rear. Applicant

replied he never gave that consideration but would if necessary.

In Favor

George Prescott, Esquire – Represents Margaret Allard

Owner of the lot is Maurice Allard. Corner lot abuts Allard lot which is side yard not rear yard. The side yard should be 18 feet. Asking for front yard deviation because of front concrete stairs. He consulted with the Zoning Official who took the position that the concrete stairs are part of the structure. Dozens of houses have been built with the front of the building sitting on the setback line and stairs sitting forward of that. The only reason they are here is because the Zoning Official took the position that the concrete stairs which sit in front of the building is part of the structure. If the stairs were not considered, they would only be looking for something like a 5' front yard deviation. There is more of a reluctance to grant a front yard deviation and that is the reason the house is sited where it is on the plan. On behalf of Margaret Allard, she would be the only person who would be adversely affected by this application and she has no objection to it.

Opposed

Lisa Murphy

Feels this would set precedent for other lots in the neighborhood. She is concerned about the esthetics and feels the lot is unbuildable and does not conform to other homes in the area. Solicitor Krieger informed her that her lot is 5,000 sq.ft. and the proposed lot is almost

6,000 sq.ft.

John McGuiness

He is an abutter of the property. If the house is constructed, it will put a hardship on him exiting his property because it will block his view when backing out of his driveway. Feels this will also change the character of the neighborhood. His driveway is about 10 feet from the property line.

Eleanor Kelly

She objects to a house being built on the corner lot. If the house is constructed, it will block the view of cars coming from Reservoir Avenue and create a safety hazard.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. Based on a site visit, the Board feels that the subject lot is a pre-existing sub-standard lot of record. The Planning Board feels that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the dimensional variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance, nor

the Comprehensive Plan.

Motion made by Member Russo to approve an 8' 4" front yard and 8' side yard setback stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member King and carried with a 4-1 vote with Member Halmi casting the nay vote.

Mohamed Shaker, 76 Oakdale Avenue, Pawtucket, RI/Sheran Bequir, 149 Lonsdale Main Street, Lincoln, RI – Special Use Permit for the operation of a used car dealership on property located at 1740 Lonsdale Avenue, Lincoln, RI.

AP 5, Lot 40 Zoned: ML 05

Applicant asked that his application be continued to the February agenda so he could obtain an accurate site plan and hire a surveyor. Solicitor Krieger informed the Board that there was a problem with the abutters list which resulted in a notice problem. Attorney John Shekarchi informed applicant that it would be in his best interest to withdraw his application without prejudice and resubmit a new application. Applicant addressed the Board and stated he wished to withdraw his application without prejudice.

Motion made by Member Rao to allow applicant to withdraw his application without prejudice. Motion seconded by Member King. Motion carried with a 5-0 vote.

Lawrence & Cheryl Feeney, 1011 Smithfield Avenue, Lincoln, RI – Special Use Permit to provide an accounting practice and financial planning services in property located at 1011 Smithfield Avenue, Lincoln, RI.

AP 6, Lot 385 Zoned: RG 7

Chairman Arsenault informed applicant standards that needed to be met for the granting of a Special Use Permit.

Represented by: John Shekarchi, Esquire

Applicant wants to offer accounting/financial services from their home under customary home occupation as listed in our ordinance. A dimensional variance was granted in March 2004 to correct the lot. There will be no more than three full time employees at any one time.

Witness

Edward Pimentel

Motion made by Member Rao to accept Mr. Pimentel as a land use planning expert. Motion seconded by Member Halmi and carried with a 5-0 vote. (Submitted report as Exhibit #2). He visited the site which is in a RG 7 zone in which customary home occupation business is permitted. Across the street is an insurance business. This building was previously used as a real estate office. Witness informed the Board that the application before them meets all the standards required for the granting of a Special Use Permit to operate an accounting practice and financial planning services business under customary home occupation under Article 2, Section 5.1 of the zoning ordinance.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted site plan and application. The submitted site plan adequately addresses zoning requirements such as parking and safety concerns. The Planning Board recommends Approval of this special use permit. The Board feels that the proposed special use

permit will not alter the general character of the surrounding area and will not impair the intent or purpose of the Zoning Ordinance or the Lincoln Comprehensive Plan.

Member Halmi made a motion to approve the special use permit under Article 2, Section 5.1 of the ordinance stating:

- That the special use is authorized under the Town Ordinance;**
- That the special use meets all the criteria set forth in the Town Ordinance authorizing such special use;**
- That the granting of the special use permit will not alter the general character of the surrounding area; and**
- That the granting of the special use permit will not impair the intent or purpose of the Town Ordinance nor the Lincoln Comprehensive Plan.**

Motion seconded by Member Russo and carried with a 5-0 vote.

Lincoln Park, 1600 Louisquisset Pike, Lincoln, RI – Dimensional Variance to remove existing 20' lighting poles and install new 35' poles.

AP 42, Lot 24 Zoned: CR 2

Applicant returned before the Board after meeting with abutters in community room to explain proposed lighting plan.

Member King made a motion to approve a Dimensional Variance to

remove existing 20' lighting poles and replace with 85 poles that exceed the required mounting height of 20'. The poles are designed at 35' or 15' over the requirement. He further stated:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.
- Relief requested is the least relief necessary.
- Hardship amounts to more than a mere inconvenience.

Motion seconded by Member Rao and carried with a 5-0 vote.

Calyx Homes, LTD, 21 Spring Green Road, Lincoln, RI/Anita Ally, 17 Ada Drive, Chepachet, RI – Dimensional Variance for front yard relief for the construction of a single family home on property located at Pole 425, Twin River Road, Lincoln, RI.

AP 45, Lot 357 Zoned: RA 40

Chairman Arsenault informed applicant standards that needed to be met for the granting of a Dimensional Variance.

Represented by: Peter Ruggiero, Esquire

Witness:

Richard Lipsett, President Waterman Engineering

Property is located on the south side of Twin Road on a legal lot of record created by a subdivision and consists of 1.25 acres. There are wetlands to the rear of the property. Previous owner filled lot with construction material and debris and applicant wants to restore land to its original state as surrounding properties. By restoring the land, needs requested relief to construct a single family home. There is a State right of way line in front of the property. House will be 62 feet back from the edge of the pavement.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. Based on a site visit, the Board feels that the subject lot contains several limiting natural features that restrict the placement of a proposed house. The Planning Board feels that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the dimensional variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the

zoning ordinance, nor the Comprehensive Plan.

Member King made a motion to approve a Dimensional Variance for 27' front yard setback stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member Halmi and carried with a 5-0 vote.

Member Rao made a motion to adjourn. Motion seconded by Member King. Motion carried with a 5-0 vote.

Respectfully submitted,

Ghislaine D. Therien

Recording Secretary